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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,913	08/20/2001	Nghi Van Nguyen	05725.0848-00	4345

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EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/931,913	<b>Applicant(s)</b> NGUYEN ET AL.	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-92 is/are pending in the application.  
 4a) Of the above claim(s) 46-92 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-20 and 22-45 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1/3/2006.  
 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1 This action is responsive to the amendment filed on January 03, 2006.

2 Claims 1-20, 22-28 and 30-45 stand rejected under 35 U.S.C. 103(a) as being  
unpatentable over Au et al. (US 5,872,111), for the reasons set forth in the previous office action  
mailed on August 31, 2005.

3 Claim 29 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US  
5,872,111) in view of Pyles et al. (US 2001/0008630 A1), for the reasons set forth in the  
previous office action mailed on August 31, 2005.

4 Claims 46-92 are withdrawn for the reasons set forth in the previous office action mailed  
on August 31, 2005.

### ***Response to Applicant's Arguments***

5 Applicant's arguments filed 1/3/2006 have been fully considered but they are not  
persuasive.

With respect to the rejection of the claims under 35 U.S.C. 103(a) as being unpatentable  
over Au et al. (US' 111), Applicant argues that Au et al. (US' 111) does not teach or disclose a  
composition for lanthionizing hair.

The examiner respectfully disagrees with the above argument because the recitation "a  
composition for lanthionizing keratinous fibers" has not been given patentable weight because  
the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight  
where it merely recites the purpose of a process or the intended use of a structure, and where the  
body of the claim does not depend on the preamble for completeness but, instead, the process

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steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Furthermore, the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case *Au et al.* (US' 111) teaches a personal hair care product comprising sodium hydroxide in the claimed amounts as claimed (see col. 14, line 33-34), oxygen-or chlorine-liberating bleaches (oxidizing agents) (see col. 22, lines 30-31) and clay materials (complexing agents) as claimed (see col. 15, lines 5-7). *Au et al.* (US' 111) also teaches that the personal hair care products include hair wave neutralizing shampoos, hair setting products, hair styling products and hair straightening/relaxing products (see col. 31, lines 26-38). Therefore, there is a clear motivation to one having ordinary skill in the art to formulate a composition for lanthionizing keratin fibers that comprises the claimed ingredients as taught by *Au et al.* (US' 111), and would expect such a composition to have similar properties to those claimed.

With respect to the argument that based on the rejection of claim 29 under 35 U.S.C. 103(a) as being unpatentable over *Au* in view of *Pyles et al.* (US. 2001/0008630 A1), Applicant argues that *Au* does not teach or disclose amino acids generally but discloses a subgenus of amino acids and therefore, the rejection is improper.

The examiner respectfully disagrees with the above argument for the same reasons set forth in the previous office action mailed on 8/31/2005.

With respect to the argument based on the rejection of claims 5-8 and 43-45 Under 35 U.S.C. 103(a), the Examiner would like to point out that in the Office action that mailed on August 31, 2005, at page 2, the examiner mentioned that claims 5-8 and 43-45 are obviously rejected based on the disclosure of Au et al. (US' 111) that teaches the percentage amounts of variety of other components suitable for rendering such a compositions more formulatable and sodium hydroxide is among these components wherein these components are used individually at a level of from 0.01 to 10% which overlapped with the claimed percentage amounts as claimed (see col. 14, lines 14-34). Therefore, these claims are clearly rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US' 111). Therefore, the prima facie case of obviousness has been established and the rejection under 102(a) is proper and maintained.

### ***Conclusion***

6 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

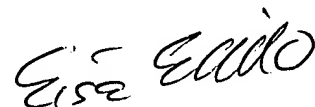
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

February 21, 2006